# Immigration Law for the Criminal Defense Attorney

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## Hypothetical #1

- · Lawful permanent resident Margaret
- Gets mad at Amazon delivery person walking through her finely manicured front yard
- Shoots a gun as the delivery person leaves; bullet goes through the delivery van
- Charged with discharge of a firearm into an occupied vehicle (SC Code § 16-23-440(B)). This is a felony with a sentence up to 10 years.

## Hypothetical #2

- · Mario is in the United States with no legal status
- Mario's employer has an audit of their I-9 forms conducted by federal immigration officials
- They discover that Mario has given the employer a name and social security number belonging to someone else
- Mario is charged with forgery, S.C. Code § 16-13-10(C). This is a misdemeanor with a maximum possible sentence of 3 years.

### General Overview: Types of Immigration Status

- A person not in the U.S. lawfully
  - The person entered lawfully on a temporary visa but did not leave
  - The person entered unlawfully

### General Overview: Types of Immigration Status

A person lawfully in the U.S. temporarily

• Tourists

### General Overview: Types of Immigration Status

#### Tourist visas

- Tourist visa applied for at consulate
- Visa Waiver countries: https://travel.state.gov/ content/travel/en/us-visas/tourism-visit/visawaiver-program.html
- · Canadians



### General Overview: Types of Immigration Status

Other types of temporary status:

- Students
- Temporary work visas
- · Asylees and refugees
- DACA
- Temporary Protected Status (TPS)

### General Overview: Types of Immigration Status

Other types of temporary status:

• U visa for certain crime victims



## General Overview: Types of Immigration Status

- Lawful permanent resident status
- U.S. citizen by naturalization
- U.S. citizens born abroad



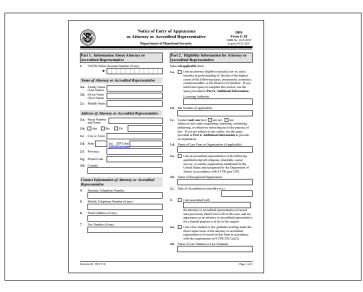
#### General Overview: Federal Entities

#### DHS (U.S. Department of Homeland Security)

- USCIS (U.S. Citizenship and Immigration Services)
- ICE (Immigration and Customs Enforcement)
- CBP (Customs and Border Protection)

#### U.S. Department of Justice

• EOIR (Executive Office for Immigration Review)



### General Overview: Example #1

John is a lawful permanent resident. He is arrested for simple possession of marijuana. You represent him.

- What is his status?
- What agencies might you interact with?
- What are possible consequences of a conviction?

### General Overview: Example #1

- His status? He is a lawful permanent resident. John is not a U.S. citizen.
- Federal entities? ICE, EOIR
- Possible consequences: Lawful permanent residents can be deported

### General Overview: Example #2

- Mary is a student at U.S.C. in the United States on a student visa.
- She wants to marry U.S. citizen Pat but she's been arrested on a DUI.

### General Overview: Example #2

- What is Mary's status? Temporary student.
- What might she want? Citizenship? Lawful permanent resident status?
- Does LPR status come automatically upon marriage?
- Federal agencies: USCIS, ICE

#### Why Does this Matter to You?

Padilla v. Kentucky, 130 S. Ct. 1473 (2010): "When the [immigration] law is not succinct and straightforward . . . a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear."

# Padilla v. Kentucky

Defendant was a Lawful Permanent Resident

He was driving a tractor trailer with a large amount of marijuana

Attorney told him that he "did not have to worry about immigration status since he had been in the country so long"

#### Major Categories of Crimes: Aggravated Felonies

- Murder, rape, or sexual abuse of a minor, trafficking in a controlled substance, trafficking in firearms, child pornography, espionage, alien smuggling, counterfeiting passports, perjury, and many others.
- A crime of violence "for which the term of imprisonment is at least 1 year." INA § 101(a)(43)(F).
- A theft offense or burglary offense "for which the term of imprisonment is at least 1 year." INA  $\S$  101(a)(43)(G).

### Consequences of AF

- Ineligible for almost all forms of relief in immigration court
- Additional penalties if the person is removed and attempts to re-enter the U.S. unlawfully

### Major Categories of Crimes: Crimes Involving Moral Turpitude

- CIMTs: "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of: (I) a crime involving moral turpitude . . . is inadmissible" INA § 212(a)(2)(A)(i)
  - Certain exceptions if committed under 18
  - Exception if the maximum penalty did not exceed imprisonment for one year (and, if convicted, the person not sentenced to a term more than 6 months)

#### **CIMTs**

- What is a CIMT? "conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general . . ."

  Matter of Franklin, 20 I & N Dec. 867 (BIA 1994)
  - No cases examine specific SC crimes

### Major Categories of Crimes: Drug Crimes

- Controlled substances. "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of: (II) a violation of . . . any law . . . relating to a controlled substance . . . " INA § 212(a)(2) (A)(i)
  - A waiver is available "insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana" if certain facts are established by the applicant. INA § 212(h).

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#### Hypothetical #1: Possible Pleas

- Discharge into an occupied vehicle: Assault and battery? Firearms offenses?
- Aggravated breach of peace

## Hypothetical #2

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#### General Recommendations for Defense Attorneys

- PTI is GOOD. Conditional discharge is bad.
- · Any drug conviction is bad.
- Violent crimes are bad.
- · Look at the list of aggravated felonies on the handout. These are the worst crimes.
- · Always know your client's citizenship.
- Always advise non-citizen clients that a conviction could affect their immigration status. Call for help.

## Immigration Hold/Detainer

U.S. Immigration and	IOMELAND SECURITY I Customs Enforcement ER - NOTICE OF ACTION
File No:	Date:
TO: (Name and Title of Imitiation - OR Any Subsequent Law Enforcement Agency)	FROM: (Department of Homeland Security Office Address)
MAINTAIN CUSTODY OF ALIEN FOR	A PERIOD NOT TO EXCEED 48 HOURS
Name of Alien:	
Date of Birth: Nationality:	Sex:
THE U.S. DEPARTMENT OF HOMELAND SECURITY RELATED TO THE PERSON IDENTIFIED ABOVE, C	URRENTLY IN YOUR CUSTODY:
☐ Initiated an investigation to disturmine whether this person is se	Djict to removal from the United States.
<ul> <li>Initiated nerroual proceedings and served a Notice to Appear of attached and was served on</li> </ul>	or other changing document. A copy of the changing document is
(Date)	
Served a warrant of arrest for removal proceedings. A copy of	the warrant is attached and was served on
Obtained an order of deportation or removal from the United S (This action does not limit your discretion to make decisions n	tates for this person: elated to this person's systody classification, work and overtex
sunigrements, or other matters.) IT IS REQUESTED THAT YOU:	
the time when the sulgoct would have otherwise been released request leave from flooter legislation 8.0.1.8.7.8. \$28.77. which an alen? once a distainer has been issued by DHS. You are ne as possible prior to the time you otherwise would release the during business hours or 	
Provide a copy to the subject of this detainer.	
Notify this office of the time of release at least 30 days prior to	
Notify this office in the event of the inmate's death, hospitalizat	
Consider this request for a detainer operative only upon the au	bject's conviction.
Cancel the detainer previously placed by this Office on	laser)
(Name and title of Immigration Officer)	(Signiture of Immigration Officer)
swignic utrychia inia 40-rasir parios.	maint using the envelope enclosed for your convenience or by for your own records so you may track the case and not hald the
Last criminal charge/conviction: Estimated release date:	Date of latest criminal change/convictions
Notice: Once in our custody, the subject of this detainer may be rem crime, or if you want this individual to remain in the United States to as a witness, please notify the ICE Liew Enforcement Support Center	
(Name and tide of officer)	(Signature of Officer)
ICE Form I-247 (8/11)	Page 1 of 3

U.S. Department of Homeland Security		Notice to Appear
In removal proceedings under 8 Subject ID:	ection 240 of the Immigration a	nd Nationality Act:
amject is.	FINS: 3"	File No: _A205 98 :
In the Matter of	DOB: 03/. /1975	Event No: COA!
-		
Respondent:		currently residing a
	umber, street, city and ZIP code)	(803)
	urner, street, eay and 211° ende)	(Area code and phone number)
I. You are an arriving alion.		
2. You are an alien present in the t	Juited States who has not been admitted	or purofed.
3. You have been admitted to the I	Anked States, but are removable for the r	casons stated below.
The Department of Homeland Security at	Rogos that you:	
1. You are not a citizen or	national of the United Ste	
2. You are a native of MEXI		
<ol> <li>You arrived in the Unite date;</li> </ol>	d States at or near unknown	place, on or about an unknown
4. You were not then admitt	ed or paroled after inspect	ion by an Immigration Officer.
On the basis of the foregoing, it is charged provision(s) of law: 212(a1 (6) (A1 (1) of the Immi- malion present in the United the United States at ony tis	gration and Nationality Act	, as assended, in that you are an ted or paroled, or who arrived in meignated by the Attorney General.
Section 235(b)(1) order was vacated	d pursuant to: □8CFR 208.30(f)(2) □	
YOU ARE ORDERED to appear before at 148 CCA 80AD LEBERTH GA 31815. BOD	i immigration judge of the United States R. Sungkia, GA	Department of Justice at:
	r Althers of humigration Court, including Room I	harier, (fung)
on To be set, at To be as (Zine)		he removed from the United States based on the
charge(s) set fath above.	K 7053 THOMPSON SODO	SDDO
Desc February 25, 2014	(Eightfurr and E)	le of housing Officer)
		(City and State)
	See reverse for important inform	

, - 3	Event No: COA14
	File No: A205 #
I Highway SOUTH CAROLINA.	FIN:
Pursuant to the authority contained in section 236 of the Code of Federal Regulations, I have determined that pe your case, and in the event you are ordered removed fre removal, you shall be:	nding a final determination by the immigration judg
detained in the custody of the Department of	Howaland Security
ED released under bond in the amount of \$ 5,00	
☐ released on your own recognizance.	
You may request a review of this determination by a	
□ You may not request a review of this determination! Nationality Act prohibits your release from custody.	y an immigration judge because the Immigration at
<u>x.</u>	usa vecessor esso (Supplies of suborins/office)
800	(Fith of authorized office)
Qui	(Markonin)
☐ I do ☐ do not request a redetermination of this cust	ody decision by an immigration judge.
El Tacknowledge receipt of this notification.	
(Separate of respondent)	(0ac)
RESULT OF CUSTOD	Y REDETERMINATION
On, custody status/conditions for	release were reconsidered by:
☐ Immigration Judge ☐ DHS Official ☐	Board of Immigration Appeals
The results of the redetermination/reconsiderationare	::
	☐ Release - Order of Recognizance
	Release - Personal Recognizance     Other:
Same (State	
(Signaturorif office)	

# The Detention and Removal Process

- Immigration Hold/Detainer
- Notice to Appear (NTA)
- Immigration Bond Process
- Immigration Court Process
- Airport Detention/NTA for LPRs

### Complexities of Immigration Law

#### Unlawful presence

- If the person entered without inspection, must depart and consular process
- If the person has more than one year of unlawful presence in the U.S. the person cannot return to the U.S. for 10 years
- Waiver for unlawful presence available for some people (not eligible for if a second unlawful entry)

### Complexities of Immigration Law

Many other reasons visas can be denied:

- · Criminal history
- Public charge
- Prior misrepresentations
- · Prior deportation

# Issues in the News: Asylum

A person who "is unable or unwilling to return to, and is unable or unwilling to to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." INA § 101(a)(42)(A) [8 U.S.C. § 1101(42)(A).